COURT NO. 2

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 101 (S/S) of 2002
(Old No. 33400 of 1994)

Sri Srivasts Nautiyal, Son of late Sri P.P. Nautiyal,
Resident of Village Kalagarh, District Dehradun
……..Petitioner

Versus

1. Executive Officer, Nagar Parishad/Nagar Palika, Dehradun.
2. Director Local Bodies, Uttar Pradesh, 4 Prayagnarain Marg.
3. Nagar Paika, Dehradun, through its Administrator/District Magistrate, Nagar Parishad/ Nagar Palika, Dehradun.

…….Respondents.

With

Writ Petition No. 5132 (S/S) of 2001
(Old Case No. 32086 of 1994)

1. Sri Bansi Lal Dobhal son of Late Sri Lokanand Ji Dobhal, working as Assistant Tax Superintendent in the office of Nagar Palika/Nagar Parishad Dehradun.
2. Sri Vinod Prakash Bhatt, son of Late Sri Shivanand Bhatt, working as Tax Inspector in the officer of Nagar Parishad/Nagar Palika, Dehradun.

…….Petitioners.

Versus

1. Executive Officer, Nagar Parishad/Nagar Palika, Dehradun.
2. Director Local Bodies, Uttar Pradesh, 4 Prayagnarain Marg, Lucknow.
3. Nagar Palika, Dehradun, through its Administrator/District Magistrate, Nagar Parishad/Nagar Palika, Dehradun.

……Respondents.

Sri Vipul Sharma, learned counsel for the petitioner/petitioners.
Sri B.D. Upadhyaya, learned counsel for the respondents

Dated: 12.12.2007

Hon'ble P.C. Verma, J.

Since both these writ petitions have been filed seeking similar relief based on similar set of facts, hence they are being decided by one and common judgment. By means of these writ petition, the petitioners have prayed for issuance of a writ in the nature of certiorari quashing the impugned order dated 21.9.1994 passed by respondent no. 1 and have further prayed to issue a writ of mandamus commanding the respondents not to adversely interfere with the services of the petitioners on the ground that their promotion has yet not been approved by the Director, Local Bodies, U.P., Lucknow.

2. For the sake of convenience, the brief facts of Writ Petition No. 101 (S/S) of 2002 are given as under.

3. The petitioner was appointed as a Clerk in the Office of Nagar Palika, Dehradun in the pay scale of Rs. 340-550 by an order dated 26.11.1976. One Sri Girdhari Lal Gaur was a Tax Inspector and after his retirement the then President of Nagar Palika, Dehradun asked the petitioner to work as Tax Inspector in addition to the work of Clerk subject to the approval of the Director, Local Bodies U.P./ respondent no.2. The petitioner was authorized to draw the salary of the post of Tax Inspector but it was all subject to the approval of respondent no. 2. The petitioner gave an undertaking before respondent no. 1 that in case the approval is not accorded by respondent no.2, respondent no. 1 shall be entitled to recover excess

amount of the salary paid to the petitioner. Respondent no.2 vide his letter dated 08.7.1992 in response of the above mentioned recommendation did not accord approval and has further observed that the said promotion is irregular and has directed the concerned authority to recover the excess amount of salary paid to the petitioner. Thereafter, in view of the order of respondent no.2, the petitioner was reverted with immediate effect vide the impugned order.

4. Narration of the above mentioned facts clearly established that the petitioner was never promoted rather a recommendation for his promotion was sent to the respondent no. 2 for the approval and petitioner was allowed to draw the salary in the higher scale awaiting the orders of respondent no.2 and with a clear cut condition that if approval for the same will not be accorded by the respondent no. 2, the Department will be entitled to recover the excess amount of salary so paid to the petitioner. Since, the competent authority i.e. respondent no.2 did not accord his approval for the promotion of the petitioner, the action of the department cannot be termed as harassment of the petitioner. I do not find any infirmity in the impugned order and the same warrants no interference by this Court.

5. The writ petitions are devoid of merit and are dismissed accordingly. No order as to costs.

(P.C. Verma, J.)

12.12.2007
RBS